
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number: EB-02-BF-399
Tennessee Gas Pipeline Company)	
Owner of Antenna Structure # 1009025)	NAL/Acct. No. 200332280007
Syracuse, New York)	
)	FRN: 0001 6428 83
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 12, 2003

By the Resident Agent, Buffalo Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Tennessee Gas Pipeline Company (Tennessee Gas), owner of antenna structure #1009025, has apparently violated Section 17.4(a) and 17.50 of the Commission’s Rules¹ (“Rules”) by failing to register the tower, and by failing to clean and repaint its antenna structure to maintain good visibility. We conclude that Tennessee Gas is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. On October 31, 2002, an agent of the Commission’s Buffalo Office inspected the antenna structure bearing FCC antenna structure registration (“ASR”) #1009025 and located near Syracuse, New York. At the time of inspection, the tower’s paint was chipped and faded, reducing the visibility of the structure. The paint was severely peeling, and the red lighting had been replaced by a white strobe. The coordinates observed during inspection did not correspond to the tower in the FCC database with that ASR number.

3. On November 5, 2002 agent Stanbro phoned Tennessee Gas and spoke to Mr. Richard Nation of El Paso Corporation about the painting and lighting requirements for tower 1009025. Mr. Nation stated he would check the ARS Database for corrections, and that he thought Tennessee Gas Pipe Line had applied with the FAA for modification of the painting and lighting on tower 1009025. The agent asked Mr. Nation about the tower coordinates, and Mr. Nation stated he was sure the coordinates were correct.

¹ 47 C.F.R. §§ 17.4(a) and 17.50.

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4. On November 12, 2002 Mr. Nation phoned and advised agent Stanbro that he was unable to find any record of applying for a painting and lighting modification with the FAA. At that time he gave agent Stanbro the current address for correspondence with Tennessee Gas. On November 13 2002, the Buffalo Office issued a Notice of Violation (“NOV”) to Tennessee Gas citing violation of Sections 1.5, 17.50, and 17.57 of the Rules².

5. On November 25, 2002, the Buffalo Office received a reply from Mr. Nation of El Paso Corp. The reply stated that Tennessee Gas, a subsidiary of El Paso Corp., still owned tower 1009025 so, in their view, there was no violation of Section 17.57. Further, he stated that Tennessee Gas had installed medium intensity strobe lighting, which was intended to supercede the beacon and painting requirement. The FAA Eastern Region office does not have a record of any submission of a Notice of Proposed Construction or Alteration to change the markings. Tennessee Gas had not taken appropriate steps to secure a new determination of No Hazard from the FAA that would endorse the installation of medium-intensity strobe lights in place of the painting and beacon requirement. The necessary Notice of Proposed Construction or Alteration was transmitted to the FAA on November 21, 2002.

6. On December 30, Agent Stanbro talked with Mr. Nation, requesting a faxed copy of paperwork filed with the FAA. Mr. Nation faxed the modification paperwork, and confirmation from the Federal Aviation Administration.

7. On February 13, 2003 Agent Stanbro rechecked the coordinates for tower 1009025, and measured them as Lat: 42 56 26N and Long 076 06 52W. The coordinates, taken at the entrance gate to the tower approximately one hundred feet from the tower base, differ from the coordinates of 42 56 33.2N x 076 07 0.7W on the Federal Communication’s Antenna Structure Registration Database and the FAA Form 7460-1 filed with the Federal Aviation Administration by over a tenth of a mile. On February 18, 2002 Mr. John Brenner, surveyor for El Paso Corp., phoned agent Stanbro to advise of the new coordinates, 42 56 28N / 076 06 53.4 W, and said he would email a statement to agent Stanbro to that effect. These coordinates differ 0.144 miles (760 feet) from the coordinates registered with the Federal Aviation Administration and the Federal Communications Commission by Tennessee Gas.

III. DISCUSSION

8. Section 17.4(a) of the Rules requires the owner of an existing or proposed tower that requires notice of proposed construction to the Federal Aviation Administration must register the structure with the Commission. All information provided to the Federal Aviation Administration and Federal Communication Commission must be accurate. At the time of inspection, the FCC database showed there was no tower registered at or near the coordinates measured by the agents and verified by the surveyor employed by the owner.

9. Section 17.50 of the Rules states that antenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility. At the time of inspection, Tennessee Gas’s tower paint visibility had deteriorated over time to the point of being a hazard to air navigation. They had not filed a modification application with the FAA to discontinue

² 47 CFR §§ 1.5 and 17.57.

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painting and lighting specifications shown on their authorization.

10. Based on the evidence before us, we find that Tennessee Gas willfully³ and repeatedly⁴ violated Sections 17.4(a) and 17.50 of the Rules by failing to properly register their tower, and by failing to repaint the tower to maintain good visibility. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁵, sets the base forfeiture amount at \$3,000 for failure to file the required forms or information, and at \$10,000 for failure to comply with prescribed lighting and/or marking requirements. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 ("Act"), as amended⁶, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors listed above, and applying the inflation adjustments, we believe that a thirteen thousand dollar (\$13,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷, and Sections 0.111, 0.311 and 1.80 of the Rules⁸, Tennessee Gas Pipeline Company is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violation of Sections 17.4(a) and 17.50 of the Commissions Rules.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Tennessee Gas Pipeline Company, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provide that "the term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111 and 0.311.

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Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332280007 and FRN: 0001 6428 83.

14. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. 200332280007.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Tennessee Gas Pipeline Company, 1001 Louisiana, Houston TX 77002.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro
Resident Agent
Buffalo Office

Attachment A: Condensed List of Small Entities.

⁹ See 47 C.F.R. § 1.1914.